Supreme Court, U. S.
FILED
DEC 30 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM 1976

No. 76-439

TERRITORY OF GUAM,
Petitioner,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petition for Certiorari Filed September 22, 1976
Writ of Certiorari Granted November 15, 1976

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Index

	Page
Notice of Appeal to the Supreme Court of Guam and Appellate Division of the District Court of Guam	A-1
Order of Dismissal by District Court of Guam	A-2
Notice of Appeal to the 9th Circuit Court of Appeals ...	A-3
"Suggestion of Appropriateness of Hearing in Banc" by Appellant before the 9th Circuit in Case No. 76-1557 (this case)	A-4
Order of 9th Circuit granting request of Appellant	A-11
Opinion of the 9th Circuit in favor of Appellant in this case	A-12

In the Superior Court of Guam

Criminal Case No. 84F-75

The People of the Territory of Guam,
Plaintiff,
vs.
Edmund J. Olsen,
Defendant.

[Filed, Superior Court of Guam, Oct. 28, 1975]
[Filed, District Court of Guam, Oct. 29, 1975]

NOTICE OF APPEAL

Notice is hereby given that defendant hereby appeals to the District Court of Guam and to the Supreme Court of Guam and to each of them from the final judgment entered in this proceeding on the 28th day of October, 1975.

Dated at Agana, Guam, this 28th day of October, 1975.

/s/ Edmund J. Olsen
Edmund J. Olsen

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(Filed March 9, 1976)

ORDER

On authority of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam, No. 75-1059* (9th Cir., Jan. 14, 1976),

IT IS ORDERED that this Appeal be and the same hereby is dismissed for lack of jurisdiction.

Dated at Agana, Guam this 9th day of March, 1976.

/s/ CRISTOBAL C. DUENAS
CRISTOBAL C. DUENAS, JUDGE
DISTRICT COURT OF GUAM

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

[Filed Mar. 10, 1976]

NOTICE OF APPEAL

Notice is hereby given that Edmund J. Olsen, defendant-appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of dismissal entered in this appeal on the 9th day of March, 1976.

Trapp, Gayle, Teker,
Hammer & Lacy,
A professional corporation,

/s/ Howard Trapp
Through
A licensed employee,
Attorneys for defendant-appellant

United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

On Appeal from the District Court of Guam

SUGGESTION OF APPROPRIATENESS OF HEARING IN BANC

Trapp, Gayle, Teker,
Hammer & Lacy,
Post Office Box 3367,
Agana, Guam 96910,
Attorneys for
Defendant-Appellant.

Table of Authorities Cited

Cases Pages

Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam, No. 75-1059 (9th Cir. Jan. 14, 1976) A-8, A-10

Statutes

Court Reorganization Act, Guam Public Law 12-85 (January 16, 1974) A-7

Organic Act of Guam, Section 22 ..... A-10

United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

On Appeal from the District Court of Guam

SUGGESTION OF APPROPRIATENESS OF HEARING IN BANC

Comes now, Edmund J. Olsen, defendant-appellant, appearing by and through his attorneys Trapp, Gayle, Teker, Hammer & Lacy, and makes this suggestion that the Court hear the within entitled appeal in banc. This suggestion is made pursuant to Rule 35 of the Federal Rules of Appellate Procedure and upon the ground and for the reason that the proceeding herein involves a question of exceptional importance.

The issue presented by this appeal is whether the Guam Legislature acted within its authority under the Organic Act in enacting the Court Reorganization Act, Guam Public Law 12-85 (January 16, 1974), which purports to strip the District Court of Guam of its appellate jurisdiction except for those cases

arising under federal law or involving the territorial income tax. This same legislation created the Supreme Court of Guam and conferred upon that court all remaining appellate jurisdiction. Because no appellate review beyond the Supreme Court of Guam is permitted by law, an additional issue is presented as to whether or not Congress authorized the Guam Legislature to eliminate appellate review by the Federal court system under the language of the Organic Act.[3]

The issues thus drawn were previously considered by three circuit judges of this court in the case of *Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam,* No. 75-1059 (9th Cir., Jan. 14, 1976). The majority in that case concluded the Guam Legislature had acted in conformity with the authority granted to it by Congress under the language of the Organic Act. However, in a strongly reasoned dissent Circuit Judge Kennedy concluded that it was unlikely that Congress intended to give the Guam Legislature authority to so act and that such authority should not be assumed in the absence of express language to that effect. Noting that important Federal issues can be presented in cases which do not "arise under" Federal law the dissent pointed out that there is no provision for appeal beyond the Supreme Court of Guam as created by the Guam Legislature. The dissent compared Guam's judicial system with those established in other territories and concluded that there was no congressional intention to except Guam from Federal appellate review as is provided for in Puerto Rico and

the Virgin Islands. Judge Kennedy noted that Congress in the past provided for review by article III courts of all cases in the former territories of Hawaii and Alaska and went on to conclude that

> "I do not think Congress intended to give Guam, of all its territories, the unchecked power to transfer appellate jurisdiction to its local courts and by the same token to deny review by any article III tribunal."

The dissent also traced legislative history *subsequent to the enactment of the Organic Act in 1950* in support of his conclusion that Congress did not intend such a result:

> "My conclusion that Congress did not intend to authorize such a transfer of jurisdiction is supported by subsequent legislative history. In 1951, Congress amended the Organic Act to expand the Ninth Circuit's appellate jurisdiction to all final decisions of the district court, rather than the limited categories contained in the original section 23. In 1958 Congress added a paragraph to section 22(a) of the Organic Act, giving explicit authorization for the three-judge appellate court procedure that had been implemented by Guam Public Law 17. These amendments indicate a congressional purpose to sanction a prescribed system for federal court review of local court decisions. Every word of the second paragraph of the amended section 22(a) would become superfluous if Guam could remove the appellate jurisdiction of the district court. This pattern of congressional approval and acceptance cannot now be made completely moot by the Court Reorganization Act."

In voicing concern over federal issues that would not be subject to review in the federal court under the Court Reorganization Act, Judge Kennedy went on to observe:

> "Important federal issues can be presented in cases which do not 'arise under' federal law. See 13 C. WRIGHT, A. MILLER, & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3562 (1975). It seems unlikely to me that Congress intended to confer on the territorial legislature the power to eliminate review in the federal court system of all claims raised in the territorial courts."

The majority opinion in *Agana Bay* noted that the right of appellate review is statutory, and not required by the United States Constitution. The destruction of that right, however, hinging as it does here upon a difficult interpretation of what the majority itself describes as an "overstuffed sentence" in section 22 of the Organic Act, should proceed only after full and careful consideration by the court.

It is respectfully submitted that the issues presented by this appeal are of great importance, not only to defendant-appellant but also to the people of Guam, whose right to appellate review is deserving of consideration by the court in banc.

Dated, Agana, Guam,
May 10, 1976.

Respectfully submitted,
TRAPP, GAYLE, TEKER,
HAMMER & LACY,
By PAUL LACY,
Attorneys for
Defendant-Appellant.

United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Appellee,
vs.
Edmund J. Olsen,
Appellant.

[Filed June 15, 1976]

Appeal from the United States District Court
for the District of Guam

Before: CHAMBERS, BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

Upon the suggestion of a party and the request of a regular active judge, a vote was taken at a regular meeting of the court upon the question of taking the above-entitled case en banc. A majority of the active judges voted, and it is hereby ordered, that this case be submitted forthwith to the court sitting en banc, without oral argument or further briefs.

For the Court:

/s/ Richard H. Chambers
Chief Judge

United States Court of Appeals
for the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(August 10, 1976)

Appeal from the United States District Court
for the District of Guam

OPINION

Before: BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

PER CURIAM:

In Agana Bay Development Co., v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976) a divided panel of this court held that the Organic Act of Guam, 64 Stat. 384 (1950), authorized the territory to enact its Court Reorganization Act, by which it transferred the appellate jurisdiction of the district court to the newly created Supreme Court of Guam. The record in that case shows that it was settled

after our opinion issued; no petition for certiorari was filed with the Supreme Court of the United States.

Appellant in the present case was convicted of criminal charges in the Superior Court of Guam. He appealed to the United States District Court for the Territory of Guam [sic] and that court dismissed the appeal on the authority of *Agana Bay*. Appellant then petitioned for a writ of certiorari to the Supreme Court of the United States before the case was heard in our court; the petition was denied. We ordered the case submitted to the court en banc so that the question presented in *Agana Bay* could be resolved by the full court.

We now hold that the provisions of Guam's Court Reorganization Act transferring the appellate jurisdiction of the district court to a territorial court are not authorized by the Organic Act. We therefore overrule the panel's opinion in *Agana Bay Development Co. v. Supreme Court of Guam*. In so holding we adopt the analysis of the dissenting opinion in *Agana Bay*. We find particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. See 529 F.2d at 960-61, n.3.

We recognize that Guam's Court Reorganization Act was drawn to give expression to a strong desire by the territorial legislature for a greater degree of

autonomy and self-government for Guam, and our ruling should not be construed as critical of that objective. We hold only that the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide.

The ruling of the district court declining appellate review in this case is reversed and the cause remanded.

GOODWIN, Circuit Judge, with whom Judges Duniway, Trask and Wallace join, dissenting:

I dissent, for the reasons set out by Judge Carter in Agana Bay Development Co. v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976).

MEMORANDUM OF CIRCUIT JUDGE CHAMBERS:

On June 9, 1976, I participated in the vote of the active judges of the court to take this case en banc.

On June 13, 1976, I received notice that the Chief Justice of the United States was appointing me as chairman of a newly created committee of the Judicial Conference of the United States on the Pacific Territories.

On July 8, the Chief Justice completed the committee by adding thereto our Circuit Judges Ely and Choy and Judge Paul D. Shriver (retired United States district judge for the Territory of Guam) of Denver, Colorado, and Charles H. Habernigg (former Attorney General of American Samoa), of Portland, Oregon.

In the interim between my appointment and the appointment of Judges Ely and Choy to the committee, the latter two cast their votes for the view expressed by Judge Kennedy. Judge Ely voted on June 24 and Judge Choy on June 28. I did not vote because it seemed that I should not wear a judicial hat and a semi-legislative or policy hat at the same time, although I do not consider myself disqualified.

On the other hand, it seems proper that the votes of Judges Ely and Choy should be counted because their official positions on the committee were created after they had voted.